

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS)	
)	
)	
Petition for a Certificate of Public Convenience and)	
Necessity, pursuant to Section 8-406.1 of the Illinois)	
Public Utilities Act, and an Order pursuant to Section 8-)	
503 of the Public Utilities Act, to Construct, Operate and)	Docket No. 12-0598
Maintain a New High Voltage Electric Service Line and)	
Related Facilities in the Counties of Adams, Brown,)	
Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton,)	
Macon, Montgomery, Morgan, Moultrie, Pike,)	
Sangamon, Schuyler, Scott and Shelby, Illinois.)	

**AMEREN TRANSMISSION COMPANY OF ILLINOIS' RESPONSE TO
THE APPLICATION FOR REHEARING OF THE LOCKHART LIVING TRUST**

I. Introduction

On March 24, 2014, putative intervenors the Lockhart Living Trust, Cheryl Given, and Rhonda Brockett (collectively, the Trust) filed an application for rehearing—not of the August 20, 2013 Order but of the February 20, 2014 Second Order on Rehearing (Second Rehearing Order). Assuming the Commission even has authority under the law to consider an application for rehearing of a rehearing,¹ the application must be denied. The Commission has examined the issues in this proceeding at length and in depth, under adversarial scrutiny, and it has determined that the Illinois Rivers Project is necessary and should be constructed along the approved routes. There is no point to further proceedings on these questions. Moreover, the thrust of the Trust's application is claimed lack of notice—but the Trust indisputably *did* receive notice, and their arguments to the contrary lack any merit. For these reasons, there should be no more rehearing,

¹ The propriety of a second rehearing is questionable. *See, e.g.*, 220 ILCS 5/10-113(a) (“Only one rehearing shall be granted by the Commission”); *Harrisonville Tele. Co. v. Ill. Comm’n Comm.*, 212 Ill. 2d 237, 246-47 (2004) (holding, after one rehearing petition is decided, a Commission order is final and appealable and a putative appellant need not file a second rehearing petition in order to preserve an issue on appeal where the Commission has granted rehearing and considered additional evidence); *Ameren Ill. Co. v. Ill. Comm. Comm’n*, 2012 IL App (4th) 100962, ¶ 172 (Jan. 10, 2012) (holding a second rehearing application improper and impermissible under Section 10-113(a) of the Act).

and the Commission should deny all requests for rehearing of the Second Rehearing Order.

II. The Trust's claims of not having notice lack credibility.

The Trust asserts that it was “not given proper or adequate notice of this proceeding, [and was] precluded from taking any role or introducing any evidence.” (Trust App. Reh’g 2.) That is patently untrue. Both ATXI and the Commission provided all notices required under the law; indeed, the Trust received *actual* notice of these proceedings. That it chose not to intervene until the eleventh hour had expired is no one’s fault but its own.

A. The Trust received actual notice of these proceedings.

ATXI will show that all applicable notice requirements were complied with in this Response. But before it does so, it would first make clear that the Trust *received actual notice* of these proceedings.

The Trust pertains to the property located at 518 Illinois Route 29, Pana, Illinois, and the Trust admits to being associated with a Ms. Juanita Brownback. (Trust App. Reh’g, Lockhart Affid. ¶¶ 10, 6.) The Commission’s Rules required that notice be sent to “each owner of record of the land [upon or across which the public utility proposes to construct facilities] as disclosed by the records of the tax collector of the county in which the land is located.” 83 Ill. Adm. Code 200.150(h). The pertinent county—Christian County—identified Ms. Brownback as the owner of the 518 Illinois Route 29, Pana, Illinois property in the Tax Assessor’s records. (*See* <http://christian.il.bhamaps.com> (search for Parcel No. 11-25-06-400-001).) In turn, Ms. Brownback’s name and the Trust property’s address appear on all of the landowner lists that ATXI provided to the Commission. (*See* ATXI Pet. Ex. C, pp. 50, 73 (filed Nov. 7, 2012); ATXI Pet. Ex. C (Rev.), pp. 52, 75 (filed Jan. 7, 2013); ATXI Updated Landowner List² (filed

² *See* pages (Pawnee-Pana Alternate Route 2, p. 5); (Pawnee-Pana Segment Option 3, p. 1); and (Pana Potential Integration Corridor, p. 2).

Oct. 7, 2013); Lockhart Affid. ¶ 3.) These addresses and persons were then provided notice by the Commission.

Thus, the owner of record of the Trust property received written notice of this proceeding not once, but *several times*. Indeed, the Trust's own filing implies that it had notice but *decided* not to intervene. It claims that "the focus of earlier proceedings was whether the Illinois Rivers Project should include the Pawnee-Pana segment at all," and the Second Rehearing Order, which approved a route for that segment of the Project, "was a total surprise" to the Trust. (Lockhart Trust App. Reh'g 2.) (This is also incorrect—the Trust property is on a portion of the route between Pawnee and Pana that has remained unchanged throughout the course of this extensively litigated proceeding.) Regardless, the point is that the Trust had notice but chose not to intervene. Whether that was a proper choice is for the Trust to decide. But, having decided not to intervene, the Trust cannot be heard to claim it lacked notice of this proceeding.

B. ATXI provided all notice required by law.

Not only did the Trust receive actual notice, but also ATXI complied with the applicable notice requirements.

Section 8-406.1 of the Public Utilities Act requires ATXI to provide certain notice of the Project and the proceeding. 220 ILCS 5/8-406.1(a)(1)-(3), (d), (e). ATXI provided that notice. It established and maintained a Project website. (ATXI Ex. 4.0 (Murphy Dir.), p. 22; *see also* www.ilriverstransmission.com.) More than three weeks later, it began holding public meetings in each county where the Project was to be located and in several adjacent counties, including Christian County, where the Trust property is located. All told, ATXI held nearly 100 public meetings to provide information related to the Project. (ATXI Ex. 4.0, pp. 3-4, 22; ATXI Ex. 4.1.) It published notice of each public meeting in a newspaper of general circulation within the

affected county. (ATXI Exs. 4.0, p. 14; 4.8.) It sent written notice of the public meetings to the clerk of each county and invited a Commission representative to attend as well. (ATXI Exs. 4.0, p. 14; 4.7.) ATXI also published notice of its application in the official State newspaper subsequent to filing the Petition. (*See* Cert. of Pub. (filed Dec. 11, 2012).)

No party to this proceeding disputed that ATXI complied with these notice requirements. (*Cf.* Staff Init. Br. 7 (expressly agreeing that “ATXI has satisfied the requirements of Section 8-406.1(a)(1)-(3), (d) and (e).”).) The Commission did not find any violation in its Order and Second Rehearing Order. Nor does the Trust dispute that ATXI met these requirements.

The Trust suggests that ATXI had to provide “personal notice” to each and every person possibly affected in this proceeding—whether in-state or out.³ (Lockhart App. Reh’g 3, 4.) That would be impossible, and not surprisingly, no statute or rule required ATXI to send written notice of the Project to every impacted individual. And of course, this is a moot point, because the Trust did receive actual notice.

In short, Section 8-406.1 of the Act establishes the notice ATXI must provide, and ATXI provided it.

C. The Commission provided all required notices.

The Commission also provided the required notices of this proceeding. Section 8-406.1 of the Act requires the Commission to provide notice of certificate proceedings, and Section 10-108 provides that in all “hearings” held by the Commission, it must provide notice of the time and place fixed for hearing no less than ten days prior. 220 ILCS 5/8-406.1(f); 220 ILCS 5/10-108. And as noted above, in proceedings under Sections 8-406 and 8-503, the Commission must

³ The Trust’s trustee lives in Massachusetts. (Lockhart Trust App. Reh’g, Lockhart Affid. ¶ 3.) Ms. Given lives in Tennessee, and Ms. Brockett lives in Georgia. (*Id.*, Brockett Affid. ¶ 5.) It is incumbent upon putative intervenors, as the alleged owners of property interests in Illinois, to stay abreast of publication notices. Nothing in Section 8-406.1 requires a utility providing notice by publication (or the Commission) to hunt down an out-of-state landowner.

send notice to “each owner of record of the land [upon or across which the public utility proposes to construct facilities] *as disclosed by the records of the tax collector of the county in which the land is located.*” 83 Ill. Adm. Code 200.150(h) (emphasis added). This rule makes an important caveat that: “the omission of the name and address of an owner of record from the list or lack of notice shall in no way invalidate a subsequent order of the Commission relating to the application.” *Id.*

Not that this caveat comes into play in this case: the Commission notified all parties identified on these lists, and as discussed above, this included the property associated with the Trust and the owner of that property, Ms. Brownback. Again, actual notice is not required, but compliance with the notice requirements. But here, both were satisfied.

D. The Raynolds/Ramey modification did not impact the Trust.

Finally, the Trust implies that its property is affected by the Raynolds/Ramey modification to ATXI Alternate Route 2, which was approved by the Second Rehearing Order. The Trust claims that ATXI’s Section 8-406.1 public notice should have included notice of that modification. (Trust App. Reh’g 3.) The ALJs’ Case Management Plans, however, only required parties proposing alternative routes—not ATXI—to provide the Commission with the “names and address of affected landowners.” (Case Mgmt. Plan (Dec. 14, 2012); Revisions to Case Mgmt. Plan (Jan. 25, 2013).) And, again, ATXI provided all notice required by Section 8-406.1.

But more to point, this route modification has no impact on the Trust property. The property is located approximately *nine miles* from the Raynolds/Ramey modification. (*Compare* Second Order Reh’g, Appx. B Part II, p. 1 (showing the Raynolds/Ramey modification approximately nine miles west of the western border of Pana Township) *with* Trust App. Reh’g,

Lockhart Affid., Ex. 1 (depicting the Lockhart property, fully within Pana Township).) In fact, the Trust property is on a portion of the route between Pawnee and Pana that has *never changed* from the start to finish of this proceeding. This claim, like the Trust's other notice claims, is simply not credible.

III. Conclusion

There is no reason to rehear the rehearing of this proceeding. Both ATXI and the Commission complied with all notice requirements, and the Trust had actual notice of the proceeding. The Commission should deny any requests for a second rehearing, including this one.

Dated: March 31, 2014

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Anne M. Zehr

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CERTIFICATE OF SERVICE

I, Anne M. Zehr, an attorney, certify that on March 31, 2014, I caused a copy of the foregoing *Ameren Transmission Company of Illinois' Response to the Application for Rehearing of the Lockhart Living Trust* to be served by electronic mail to the individuals on the Commission's Service List for Docket No. 12-0598.

/s/ Anne M. Zehr

Attorney for Ameren Transmission
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